

1 James W. Morando (State Bar No. 087896)  
jmorando@fbm.com  
2 Jeffrey M. Fisher (State Bar No. 155284)  
jfisher@fbm.com  
3 Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
4 San Francisco, CA 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Attorneys for Defendant  
VOLTERRA SEMICONDUCTOR  
7 CORPORATION

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11  
12 INFINEON TECHNOLOGIES AG, a  
German corporation,

13 Plaintiff,

14 vs.  
15 VOLTERRA SEMICONDUCTOR  
16 CORPORATION, a Delaware corporation,

17 Defendant.

18 Case No. CV 11-06239 MMC (DMR)

19 [REDACTED] DEFENDANT VOLTERRA  
SEMICONDUCTOR CORPORATION'S  
RENEWED NOTICE OF MOTION AND  
MOTION TO STRIKE INFINEON'S  
THIRD AMENDED INFRINGEMENT  
CONTENTIONS AND TO CONTINUE  
STAY OF, OR LIMIT DISCOVERY

20 Date: June 27, 2013  
Time: 11:00 a.m.  
Dept.: Courtroom 4, 3<sup>rd</sup> Floor  
Judge: Honorable Donna M. Ryu

21 FILED PARTIALLY UNDER SEAL

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VOLTERRA'S RENEWED MTN TO STRIKE  
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## **NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3           **NOTICE IS HEREBY GIVEN** that on June 27, 2013, at 11:00 a.m. or on such other  
4           date and time as the matter may be heard, in Courtroom 4, 3<sup>rd</sup> Floor, of the Oakland Division of  
5           the above-entitled Court, located at 1301 Clay Street, Oakland, California, 94612, before the  
6           Honorable Donna M. Ryu, Defendant Volterra Semiconductor Corporation (“Volterra”) will, and  
7           hereby does, move the Court to strike Plaintiff Infineon Technologies AG’s (“Infineon”) deficient  
8           Third Amended Infringement Contentions and without leave to amend pursuant to Patent Local  
9           Rule 3-1 and to maintain in place the stay of all discovery by Infineon. In the event the Court  
10          does not strike Infineon’s Infringement Contentions in their entirety and without leave to amend,  
11          Volterra seeks entry of the following Orders or such other relief as the Court deems appropriate to  
12          address Plaintiff’s continued failure to comply with Patent Local Rule 3-1:

13 (1) striking Infineon's Claim Chart and assertions of infringement regarding the  
14 VT1195SFQ product for continuing to fail to specifically identify what structures in the  
15 VT1195SFQ meet each limitation of each asserted claim of the '730 Patent;

20 (3) striking reference to the VT1626SFQ, VT1656SFQ and VT1676SFQ, which Infineon  
21 has added to its Third Amended Infringement Contentions without having been granted leave of  
22 Court; and

23 (4) maintaining in place the stay of discovery in this action by Infineon as well as  
24 Volterra's deadline to serve its Patent Local Rule Invalidity Contentions unless and until Infineon  
25 has provided adequate Infringement Contentions which fully comply with this Court's Local  
26 Patent Rules.

27 This Motion is based on this Notice of Motion and Motion, the accompanying  
28 Memorandum of Points and Authorities, the accompanying Declarations of Jeffrey M. Fisher and

1 Dr. David Lidsky, the pleadings and papers on file with the Court in this action and such other  
2 materials and arguments as may be presented to the Court at the time of the hearing.

3 Dated: May 23, 2013

FARELLA BRAUN + MARTEL LLP

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By: /s/ Jeffrey M. Fisher  
Jeffrey M. Fisher

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Attorneys for Defendant  
VOLTERRA SEMICONDUCTOR  
CORPORATION

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1        **I. INTRODUCTION**

2              At the January 24, 2013 hearing on Volterra's Motion to Strike Infineon's Second  
 3 Amended Infringement Contentions ("SAICs"), the Court indicated that it was giving Infineon  
 4 "one more chance" to amend its contentions to comply with Patent L.R. 3-1. Infineon's Third  
 5 Amended Infringement Contentions ("TAICs"), however, inexplicably still fail to crystallize  
 6 Infineon's contentions and do not comply with the requirements of Patent L.R. 3-1 or the Court's  
 7 Orders of October 3, 2012 and January 28, 2013, addressing the deficiencies of Infineon's  
 8 multiple, prior contentions in critical respects.

9              As to the single Claim Chart that Infineon provides for the VT1195SFQ, Infineon's TAICs  
 10 are still *vague and unclear* with respect to the specific structure(s) found in the VT1195SFQ  
 11 Infineon is contending meets the critical "first" and "second" "metal conductors," "in contact  
 12 with" and "bumps" claim limitations. As Infineon stated in its initial infringement contentions and  
 13 admitted at the January 24, 2013 hearing, the VT1195SFQ power switch product has a number of  
 14 separate and distinct metal layers: [REDACTED]

15 [REDACTED]  
 16 [REDACTED] See  
 17 Paragraphs 4-6 of the supporting Declaration of Dr. David Lidsky (hereinafter, "Lidsky Decl.")  
 18 An image of the structure of the VT1195SFQ which shows each of [REDACTED]

19 [REDACTED]  
 20 [REDACTED] Rather than including, using or referencing  
 21 this image of the VT1195SFQ in the TAICs, Infineon has continued in its efforts to obfuscate.  
 22 Specifically, it remains unclear from the TAICs whether Infineon contends that the "metal  
 23 conductors" limitations are met by either: [REDACTED]

24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED] The ambiguity could easily be eliminated and Infineon's  
 27 contentions made clear by the addition of explicit and unambiguous statements in the contentions,  
 28 but Infineon refuses to do so. Not only do the TAICs fail to make an unambiguous statement to

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1 identify which of these two different layers it contends meet the “metal conductors” limitation, but  
 2 they contain multiple confusing and internally inconsistent statements which leave open the  
 3 question of which metal layer(s) in the VT1195SFQ Infineon contends meets the “metal  
 4 conductors” limitations. This distinction is very important with respect to the ultimate issue of  
 5 infringement in this case and with respect to what claim terms of the asserted patents may need to  
 6 be construed by the Court. This is the exact purpose for Patent LR 3-1’s requirement for the  
 7 patentee to “crystallize” its contentions with specificity.

8 A second significant deficiency with the TAICs is that they also fail to explicitly confirm  
 9 that with respect to its literal infringement contentions, Infineon is contending that the “metal  
 10 conductors” limitations are met by only a single metal layer and not a combination of layers. At  
 11 the January 24, 2013 hearing, Infineon’s counsel conceded that Infineon was contending that the  
 12 “metal conductors” are a singular layer of metal and was not contending they are met by a  
 13 combination of layers. *See* 1/24/13 Hr’g Tr. at 3:11-17, attached as Exhibit A to the Declaration  
 14 of Jeffrey M. Fisher In Support of Volterra’s Renewed Motion to Strike Infineon’s Third  
 15 Amended Infringement Contentions (hereinafter, “Fisher Decl.”). However, Infineon failed to  
 16 amend its contentions in the TAICs to make this clear. In meet and confer correspondence,  
 17 Infineon has since conceded this and suggested that it would be willing to further amend its  
 18 contentions to make this explicit. On April 26, 2013, after the Court’s admonition during the  
 19 April 18, 2013 hearing that the parties should continue to meet and confer to attempt to resolve  
 20 disputes relating to this Motion<sup>1</sup>, Infineon provided proposed revised infringement contentions to  
 21 Volterra that clarify that the “metal conductors” are not a combination of layers. *See* Fisher  
 22 Decl., Ex. P at 13, 27. If the Court is inclined to allow Infineon to amend its contentions,  
 23 Infineon should be required to clearly so state.

24 The TAICs are further deficient because they fail to clearly articulate Infineon’s  
 25 contentions under the doctrine of equivalents (“DOE”) with respect to claim 1 in that they fail to  
 26 clearly articulate Infineon’s contentions as to what structure(s) Infineon is contending in the  
 27

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28 <sup>1</sup> Volterra filed its initial Motion to Strike the TAICs on March 7, 2013. *See* Dkt. No. 226.

1 VT1195SFQ are the “metal conductors” and “bumps” under the DOE, and fail to provide an  
 2 element-by-element explanation of ***why and how*** the doctrine applies with respect to its  
 3 contentions under the DOE, as the Court has required. *See* 10/3/12 Order, Dkt. No. 132 at 7.

4 As to the asserted dependent claims 2-8, the TAICs are also deficient in that they fail to  
 5 clearly identify the specific structure(s) Infineon is contending constitute the “metal conductors”  
 6 and “bumps” for purposes of its literal infringement contentions with respect to each of the  
 7 dependent claims. Indeed, Infineon continues to fail to make its contentions as to the dependent  
 8 claims clear by again confusingly continuing to include and rely upon the same ambiguous and  
 9 unclear top-down images purporting to describe some unidentified “metal layer” as the “metal  
 10 conductors” which the Court has already found to be obfuscating.<sup>2</sup>

11 Infineon’s DOE contentions as to dependent claims 2-5<sup>3</sup> are also deficient in that they do  
 12 not explain what Infineon’s DOE contentions are with respect to ***any*** of these dependent claims.  
 13 The TAICs instead include a conclusory reference that the “metal conductors” and “bumps”  
 14 limitations in each of these dependent claims are met “both literally and under the doctrine of  
 15 equivalents” (*see* Fisher Decl., Ex. B, Appendix A, pp. 56, 58, 60 and 62 (claims 2-5)) without  
 16 any further discussion or analysis. This is plainly insufficient.

17 Further, though the TAICs reference eighteen products,<sup>4</sup> Infineon once again only

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18 <sup>2</sup> Infineon’s proposed revised infringement contentions now purport to clarify that the “metal  
 19 conductors” for purposes of the dependent claims are the same “metal conductors” allegedly  
 20 identified in claim 1. *See* Fisher Decl., Ex. P at 58, 61, 64, 67, 73, 75, 77. The problem with this  
 21 limited proposed amendment, of course, is that Infineon has not clearly identified what it is  
 22 contending are the “metal conductors” in claim 1.

23 <sup>3</sup> These are the only dependent claims as to which the TAICs make any assertion based on the  
 24 DOE in the claim chart provided. In meet and confer communications, however, Infineon has  
 25 subsequently claimed that it is now also asserting the DOE as to dependent claims 6-8. *See*  
 26 3/5/13 Baxter letter, Fisher Decl., Ex. G at 7. Given that the DOE is not even mentioned in the  
 27 claim chart as to these claims in the TAICs (or in any of Infineon’s prior infringement  
 28 contentions), Volterra seeks an order that Infineon be precluded from asserting the DOE as to  
 these dependent claims. Infineon’s attempt to add DOE contentions in its proposed revised  
 infringement contentions should be rejected.

<sup>4</sup> The TAICs improperly have added three additional new products, though Infineon has not  
 obtained leave of Court to do so and despite the Court’s Order of December 11, 2012, preventing  
 them from doing so without leave (Dkt. No. 162). As discussed at page 22 below, the reference  
 to these additional products (the VT1626, VT1656 and VT1676) should not be permitted unless  
 and until the Court grants Infineon’s motion for leave to amend.

1 provides a claim chart for one accused product (the VT1195SFQ), suggesting that this is  
 2 sufficient because it is supposedly “representative” of each of the other referenced products by  
 3 contending that “[t]he Accused Products are Volterra’s integrated power fcQFN (flip chip quad  
 4 flat no-lead) products with two or more ground pins and two or more switching node pins.” This  
 5 is factually unsupportable and impermissible. It is Infineon’s burden to show that the one product  
 6 charted (the VT1195SFQ) is in fact representative of each of the other referenced products with  
 7 respect to ***each*** limitation of the claims. Infineon has not done so. While Infineon relies on  
 8 materials that show that the Volterra products that it references may all be similar with respect  
 9 to ***one*** portion of the structure of the VT1195SFQ – the flip chip QFN (“fcQFN” package) --  
 10 Infineon is required to show that the remaining structures of the representative product it relies on  
 11 relevant to ***each*** claim limitation is the same in each of the other products that it has not provided  
 12 a claim chart for. Infineon has not shown that the relevant structures in the VT1195SFQ other  
 13 than the package are “representative” of all of the other products for all claim limitations. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] and therefore tie directly to key claim limitations including the “metal  
 19 conductors,” “in contact with” and “bumps” limitations in independent claim 1 and the limitations  
 20 of dependent claims 2-8, which include additional limitations relating to the structure and  
 21 arrangement of the “metal conductors” and/or how the “bumps” are connected to the “metal  
 22 conductors.” Infineon’s submission of only a single claim chart for the VT1195SFQ is therefore  
 23 inadequate, and should not be permitted.

24 Volterra submits that the Court should now strike Infineon’s TAICs in their entirety and  
 25 should do so without leave to amend. To the extent the Court is inclined to permit Infineon a  
 26 ***fifth*** opportunity to comply with its Patent Local Rule obligations, the Court should order that  
 27 Infineon cannot accuse any product other than the VT1195SFQ and limit discovery in the case to  
 28 just that product. The Court should further order that, with respect to the VT1195SFQ, Infineon

1 must clearly and specifically identify “where each limitation of each asserted claim” is found  
 2 within the VT1195SFQ and specifically identify which of the multiple layers of the VT1195SFQ  
 3 Infineon contends meet the “metal conductors,” “in contact with” and “bumps” limitations.

## 4 **II. STATEMENT OF ISSUES TO BE DECIDED**

5       1.      Whether Infineon’s February 14, 2013 Third Amended Infringement Contentions  
 6 once again fail to comply with Patent Local Rule 3-1 and should therefore be stricken in their  
 7 entirety or other appropriate relief granted given Infineon’s failure to comply.

8       2.      Whether the stay of discovery from Volterra (including the deadline for service of  
 9 Volterra’s Invalidity Contentions) should be maintained unless and until Infineon fully complies  
 10 with Patent Local Rule 3-1.

## 11 **III. FACTUAL AND PROCEDURAL BACKGROUND**

12       In its prior motions to strike, Volterra has described in detail the background relating to  
 13 Infineon’s prior deficient infringement contentions as to U.S. Patent No. 5,945,730 (the “Sicard  
 14 Patent” or “730 Patent”). Fisher Decl., Ex. C. *See* Dkt. Nos. 111 at 14-22; 176 at 8-19. There  
 15 can be no doubt here that the Court has put Infineon on notice of what is required to comply with  
 16 the Patent Local Rules. Specifically, in its October 3, 2012 Order relating to Infineon’s  
 17 Amended Infringement Contentions, the Court determined that Infineon’s attempt to allege  
 18 “contingent” infringement contentions as to the “metal conductors,” “in contact with” and  
 19 “bumps” limitations was improper, stating that ***“Plaintiff reverse-engineered the accused  
 20 product and presumably knows whether the allegedly infringing portion has one metal layer  
 21 or multiple metal layers. It must now take a specific position on its theory of infringement, as  
 22 is required by Rule 3-1.”*** 10/3/12 Order at 6 (emphasis added).

23       Infineon’s SAICs, however, remained vague and unclear with respect to what specifically  
 24 it is in the structure of the VT1195SFQ that Infineon was contending met the “metal  
 25 conductors,” “in contact with” and “bumps” claim limitations. At the January 24, 2013 hearing  
 26 on Volterra’s Motion to Strike the SAICs, the Court stated:

27       THE COURT: So, Mr. Baxter, I have some questions. Does Infineon concede that there  
 28 are multiple metal layers in the accused product VT1195SFQ? In my review of the record, it  
 looks like there’s at least M1, M2, M3, and an RDL. Do you concede that that’s true?

1           MR. BAXTER: We agree that there are four metal layers. We don't agree with the  
 2 labels that the Defendant has applied to those four metal layers.

3           **THE COURT: Okay, but there are four metal layers?**

4           **MR. BAXTER: Yes.**

5           **THE COURT: In that accused product?**

6           **MR. BAXTER: Yes.**

7           THE COURT: What prevents Infineon from clearly and unambiguously identifying the  
 8 precise layer or layers that comprise the limitation in claim 1 that starts "plurality of first metal  
 9 conductors"?

10          MR. BAXTER: We think we have done that, your Honor. **We are alleging that the**  
 11 **metal conductor is the top metal layer under the bump.**

12          **THE COURT: Which one is that?**

13          **MR. BAXTER: The top one under the bump.**

14          **THE COURT: So just one metal layer of these four?**

15          **MR. BAXTER: Yes, your Honor.**

16          \*\*\*\*

17          **THE COURT: Mr. Baxter, my ruling is that as currently stated, these are insufficient**  
 18 **because I think they are vague and they continue to mask the actual argument that you are**  
 19 **trying to make here. [¶] So, if -- I am going to give you another chance. If Infineon can**  
 20 **clearly state that in the VT1195SFQ, the plurality of first metal conductors means the first**  
 21 **metal layer that's directly in contact with the bumps, and you can give it a name or not as long**  
 22 **as it is very clear you are talking about one metal layer and not potentially multiple metal**  
 23 **layers, then I think I would likely rule that to be sufficient. I think that that would clearly**  
 24 **state your theory of direct infringement. You then probably need to amend your doctrine of**  
 25 **equivalents chart, but there you can have any number of possible theories. It might be if it's**  
 26 **not that one layer, then we argue that layers one and two are sufficient under the DOE, or**  
 27 **layers one, two and three, or you can state different theories under the doctrine of equivalents.**  
 28 **But for your direct infringement, I think you need to be clearer than you have been in the**  
 past two rounds. Any questions about my ruling?

1           **MR. BAXTER: No. I understand. Your Honor.**

2           1/24/13 Hr'g Tr., Fisher Decl., Ex. A at 2:20-3:17 and 5:11-6:8 (emphasis added). The Court  
 3 concluded the hearing by stating that it was going to give Infineon "one more chance to amend."  
 4 *Id.* at 8:10-11. In its January 28, 2013 Order, the Court found the SAICs deficient, stating that  
 5 "Defendant ... is entitled to know which layer or layers allegedly infringe Plaintiff's patent. In  
 6 this case, Plaintiff knows more than it is showing," that "[t]he Patent Local Rules do not tolerate  
 7 this kind of obfuscation" and that "Plaintiff knows that more than one metal layer exists.  
 8 Plaintiff's vague reference to "a metal layer" masks the exact substance of its allegations and  
 9 does not "'crystallize [Plaintiff's] theories of the case,'" as Rule 3-1 commands.... **Plaintiff**  
 10 **reverse-engineered the VT1195SFQ and presumably knows -- and now must state -- which**

1       ***metal layer(s) allegedly correspond to the claim limitations.***” 1/28/13 Order, Dkt. No. 193 at 5-  
 2       8 (emphasis added) (citations and footnotes omitted).<sup>5</sup>

3              On February 14, 2013, Infineon served its TAICs. As with its prior infringement conten-  
 4       tions, Infineon included a claim chart as to only one product (the VT1195SFQ) which was vague  
 5       and unclear with respect to what specifically it is in the structure of the VT1195SFQ that Infineon  
 6       claims meets the “first” and “second” “metal conductors,” “in contact with” and “bumps” claim  
 7       limitations. Infineon in fact made only limited changes to its claim chart as to these limitations  
 8       and did not make **any** changes to its contentions concerning the DOE, notwithstanding the Court’s  
 9       comments that Infineon would “probably need to amend [its] doctrine of equivalents chart.” *See*  
 10      1/24/13 Hr’g Tr., Fisher Decl., Ex. A at 5:24-25. Nor did Infineon make any changes to its claim  
 11      chart with respect to the dependent claims. Infineon’s TAICs, its claim chart (Appendix A), and  
 12      all supporting exhibits, are attached collectively to the Fisher Decl. as Exhibit B. Despite the  
 13      parties’ efforts to meet and confer prior to Volterra’s initial filing of this Motion on March 7,  
 14      2013 (*see* Fisher Decl., Exs. D-I, ¶¶ 5-7), they were unable to resolve their disputes concerning  
 15      the adequacy of the TAICs prior to the deadline for Volterra to file this motion. At the hearing on  
 16      April 18, 2013, the Court again instructed that the parties attempt to meet and confer concerning  
 17      Infineon’s TAICs, which Volterra attempted to do. *See* Fisher Decl., Ex. N. Although Infineon’s  
 18      counsel subsequently indicated that they were willing to make certain minor amendments to the  
 19      TAICs and has now provided proposed revised infringement contentions that address certain  
 20      minor deficiencies with the TAICs (Fisher Decl., Ex. P), Infineon continues to refuse to address –  
 21      or even respond to – the most significant problems with the TAICs. Specifically, Infineon has  
 22      repeatedly refused to address its failure to clarify what it is contending are the “metal conductors”  
 23      by referencing the actual cross section of the VT1195SFQ and has also repeatedly refused to  
 24      address the multiple inconsistent statements included in the TAICs. Infineon’s counsel has in fact  
 25      refused to address **no less than seven (7) times** the number of inconsistent statements in the  
 26      TAICs concerning what Infineon is contending are the “metal conductors” and “bumps.” *See*

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27       <sup>5</sup> Because the SAICs were determined to be deficient, the Court did not reach the issue of  
 28       whether the chart is also “representative” of other accused products. 1/28/13 Order at 8 n.4.

1 Fisher Decl. ¶ 20. Infineon's counsel has also repeatedly refused to explain why it believes the  
 2 terms "RDL" and "UBM" are ambiguous, particularly given that Infineon used them in its initial  
 3 infringement contentions and is continuing to use the term "UBM" in the TAICs. Fisher Decl. ¶¶  
 4 7, 20 and Exs. K, M. Volterra was therefore constrained to file this renewed motion.

5 **IV. ARGUMENT**

6 **A. Infineon's Claim Chart For The VT1195SFQ Once Again Fails To**  
**7 Specifically Identify The Structure(s) That It Contends Meet The "Metal**  
**Conductors," "In Contact With" And "Bumps" Limitations.**

8 1. Infineon's TAICs Fail To Explicitly State What It Has Represented To  
 9 The Court And Volterra – That It Is Claiming That The "Metal  
 10 Conductors" Limitations In Claim 1 Are Met By Only A Single Metal  
 Layer And Not A Combination Of Layers.

11 In prior versions of Infineon's infringement contentions, Infineon failed to make clear  
 12 whether with respect to its literal infringement contentions it was contending that the "metal  
 13 conductors" limitations were met by only a single metal layer and not a combination of layers. At  
 14 the January 24, 2013 hearing, Infineon's counsel conceded that Infineon was contending that the  
 15 "metal conductors" are a singular layer of metal and was not contending they are meant to be a  
 16 combination of layers. *See* 1/24/13 Hr'g Tr., Fisher Decl., Ex. A at 3:11-17. Nevertheless, in the  
 17 TAICs, Infineon did not amend the language to make this clear. In meet and confer discussions  
 18 since the TAICs were filed and in its proposed revised infringement contentions, Infineon has  
 19 stated that it wanted to now further amend its contentions to make this clear, but even then has  
 20 proposed further ambiguous language.<sup>6</sup> If the Court is inclined to grant Infineon further leave to  
 21 do what it should have done long ago, Volterra submits that the language of any further

22

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23 <sup>6</sup> Specifically, Infineon's proposed amended infringement contentions provide that "[t]he 'metal  
 24 conductors' are the top metal layer under the bumps, which is the 4<sup>th</sup> conductive metal layer in  
 25 the VT1195SFQ. The 'metal conductors' are not a combination of the 3<sup>rd</sup> and 4<sup>th</sup> conductive  
 26 metal layers." *See* Proposed Amendment, Fisher Decl., Ex. P at 13, 27. This is unclear and  
 27 ambiguous because the term "4<sup>th</sup> conductive metal layer" is not a term with any understood  
 meaning in the context of Infineon's contentions. Lidsky Decl. ¶ 13. Moreover, as discussed  
 below, other statements in the TAICs - which Infineon has repeatedly refused to address - are  
 flatly inconsistent with this proposed amendment in that they suggest that the "metal conductors"  
 are something other than the "top metal layer under the bumps," which Infineon had identified as  
 [REDACTED] in its initial infringement contentions.

1 amendment should be made crystal clear. Volterra proposes that Infineon should be required to  
2 amend its contentions to make a statement such as this:

3 Infineon contends that the “metal conductors” limitations are met in the VT1195SFQ by  
4 a singular layer of metal and does not contend that these limitations are met by a  
combination of layers.

2. Infineon's Literal Infringement Contentions Fail To Identify Which Of Two Specific Layer That It Contends Meet The "Metal Conductors" Limitations In Claim 1

7 Notwithstanding the Court’s Orders and the Court’s clear directives at the January 24,  
8 2013 hearing, in its TAICs, Infineon continues to attempt to “hedge its bets” and obfuscate its  
9 position with respect to the “metal conductors,” “in contact with” and “bumps” limitations. As  
10 Infineon stated in its initial infringement contentions and admitted at the January 24, 2013  
11 hearing, the VT1195SFQ power switch product has a number of separate and distinct metal  
12 layers: [REDACTED]

13 [REDACTED]  
14 [REDACTED] See Lidsky Decl. ¶¶ 4-6. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18  
19  
20  
21  
22  
23  
24  
25  
26  
27

*See Infineon's Initial Infringement Contentions, Dkt. No. 168 at Appendix A, p. 6.*

1           In its TAICs, Infineon again fails to include, use or reference this image of the  
 2 VT1195SFQ, almost assuredly because this would make it obvious that it is failing to make its  
 3 contentions clear. Instead, Infineon has continued in its efforts to obfuscate and not take a clear  
 4 position as to which specific layer in the VT1195SFQ that it contends meets the "metal  
 5 conductors" limitations. Specifically, it remains unclear whether Infineon contends that the  
 6 "metal conductors" limitations are met by either: [REDACTED]

7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] See Lidsky

10 Decl. ¶¶ 3, 7-16. To do so is obviously a very simple matter. The ambiguity could be easily be  
 11 eliminated and Infineon's contentions made clear by, for example, referencing the actual cross  
 12 section of the VT1195SFQ from Infineon's initial infringement contentions and/or by the  
 13 addition of an explicit and unambiguous statement in the contentions. Thus, if Infineon is  
 14 contending that it is [REDACTED] in the VT1195SFQ it could either point to [REDACTED]

15 [REDACTED] in its initial infringement contentions or simply state in the contentions:

16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]

19 Alternatively, if it is contending that it is [REDACTED] it could simply either unambiguously  
 20 point to [REDACTED] in its initial infringement contentions or state:

21 [REDACTED]  
 22 [REDACTED]

23           Instead, the TAICs do not make unambiguous statements to identify which of these two  
 24 different layers it contends meet the "metal conductors" limitation.

25           a.       The Ambiguity That Infineon Refuses To Clarify Is Important For  
 26                   Purposes Of Claims Construction and Summary Judgment Of  
                  Non-Infringement.

27           The ambiguity between which of these two layers that Infineon claims meet the "metal  
 28 conductors" limitations is very important with respect to the ultimate issue of infringement in

1 this case and with respect to what claim terms may need to be construed by the Court.  
 2 Independent Claim 1 of ‘730 Patent requires that the “metal conductors” be “in contact” with the  
 3 “bumps.” Thus, if Infineon contends that the “metal conductors” are [REDACTED] this will focus the  
 4 issue on non-infringement on the “in contact” limitations since [REDACTED]  
 5 [REDACTED] On the other hand, if Infineon claims that the  
 6 “metal conductors” limitations are met by [REDACTED]  
 7 [REDACTED] the “metal conductors” limitations will be the focus, since  
 8 the ‘730 Patent describes the “metal conductors” as being the second metal layer that is part of  
 9 the “chip” or “die” and derides using any additional metal layers – [REDACTED] – as an  
 10 “expensive process” that “increases the complexity and cycle time of the manufacturing process”  
 11 which can be avoided by using the invention described and claimed in the patent. *See, e.g.*,  
 12 Sicard Patent, Fisher Decl., Ex. C at 1:48-55; 4:67-5:3. Accordingly, having clarity with respect  
 13 to Infineon’s contentions on this issue is critical here to focus the claim terms which should be  
 14 the focus of the claims construction needed and the issues that will become the focus of a motion  
 15 for summary judgment of noninfringement which will result in dismissal of this retaliatory case.  
 16 This is the exact purpose for Rule 3-1’s requirement for the patentee to “crystallize” its  
 17 contentions with specificity. *See Shared Memory Graphics LLC v. Apple, Inc.*, 812 F. Supp. 2d  
 18 1022, 1024-25 (N.D. Cal. 2010).

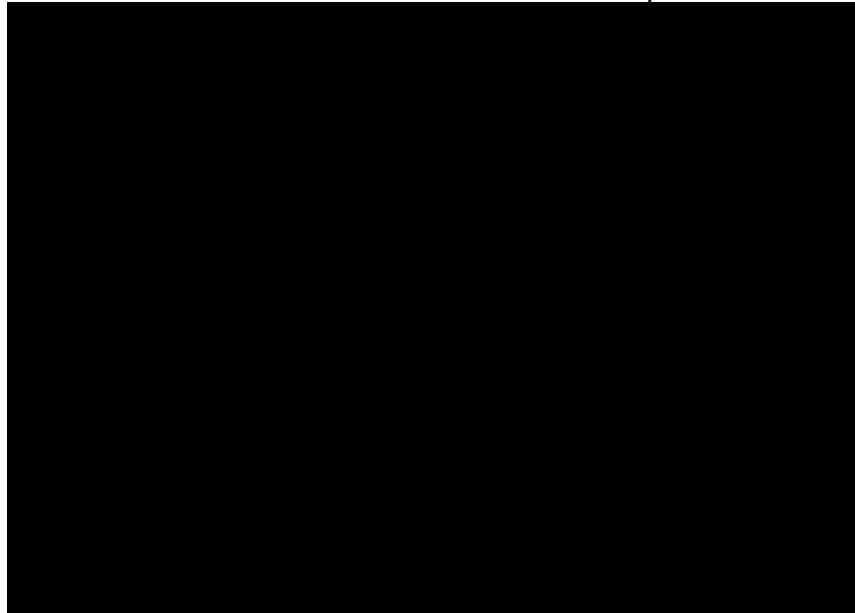
19                   b.     The TAICs Contain Multiple Inconsistent Statements As To  
 20                   Which Specific Layer In The VT1195SFQ Meet The “Metal  
                     Conductors” Limitations.

21                   Infineon’s TAICs contain multiple confusing and *internally inconsistent statements*  
 22 which leave open the question of which metal layer in the VT1195SFQ Infineon contends meets  
 23 the “metal conductors” limitations. *See* Lidsky Decl. ¶¶ 3, 7-16. For example, Infineon  
 24 continues to include and rely upon *the same ambiguous and unclear top-down images*  
 25 *purporting to describe some unidentified “metal layer” as the “metal conductors” which the*  
 26 *Court has already found to be obfuscating.* *See* Lidsky Decl. ¶¶ 8-11. Moreover, Infineon has  
 27 left unchanged the same language which creates inherent inconsistencies as to whether Infineon  
 28 is contending [REDACTED]

1 [REDACTED] that meets the “metal conductors” limitations. It therefore  
 2 remains unclear which specific metal layer (or perhaps combination of layers) of the structure of  
 3 the VT1195SFQ Infineon is contending is the plurality of “first” and “second” “metal  
 4 conductors” and also which specific structure(s) satisfies the “in contact” and “bumps”  
 5 limitations for purposes of its literal infringement contentions.

6 Specifically, despite requesting additional time from the Court at the last hearing to  
 7 change its infringement contentions, in the TAICs, Infineon made ***only two changes*** with respect  
 8 to the key “metal conductors,” “in contact with” and “bumps” limitations, which are:

- 9 • the addition of the phrase “under the bumps” in call-out boxes next to the top-down  
 10 images purporting to show the “metal conductors” on pages 11-12 and 24-25 of the claim  
 chart (Fisher Decl., Ex. B, Appendix A), and
- 11 • the addition of a new mocked up purported “illustration” of a cross-section of the  
 12 VT1195SFQ found at pages 13 (purporting to show the “plurality of first metal  
 13 conductors”) and 26 (purporting to show the “plurality of second metal conductors”) of  
 the claim chart. *Id.* This “illustration” is reproduced below:



23 Neither of these changes makes Infineon’s position clear.

24 (1) Infineon’s Addition of the Phrase “Under the Bumps” Fails  
 25 to Clarify Infineon’s Contentions.

26 The first change to the TAICs, the addition of the phrase “under the bumps” in the call-  
 27 out boxes accompanying the top-down images on pages 11-12 and 24-25 of the claim chart, does  
 28

1 not clarify Infineon's contentions. Infineon has already admitted that these top-down images  
 2 show multiple layers of metal. As the Court stated in its January 28, 2013 Order: "This birds-  
 3 eye perspective does not allow the viewer to discern whether the image depicts one or multiple  
 4 layers, let alone which specific layer(s) are shown. Even if Defendant could determine that the  
 5 image shows multiple layers, Defendant still is entitled to know which layer or layers allegedly  
 6 infringe Plaintiff's patent." Dkt. No. 193 at 6:6-9, citation omitted. Thus, the reference to some  
 7 otherwise unidentified layer in the VT1195SFQ "under the bumps" does not provide clarity,  
 8 since *all of the layers of metal in the VT1195SFQ are "under the bumps."* [REDACTED]

9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]

16 (2) Infineon's New Mocked Up "Illustration" Also Fails to  
 17 Clarify Infineon's Contentions.

18 The second and only other change made with respect to this key claim limitation in the  
 19 TAICs is the addition of the purported "illustration" added on pages 13 and 26 of the claim chart  
 20 and some accompanying text. Specifically, Infineon states that:

21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]

25 In the first instance, this is improper in that it does not set forth *Infineon's contentions*  
 26 regarding the VT1195SFQ as Patent L.R. 3-1 requires. Instead, Infineon's statement is that this  
 27 is an illustration of what "Volterra describes" as the structure of the VT1195SFQ. There is no  
 28 basis for this intentional obfuscation. Patent L.R. 3-1 requires that Infineon set forth *its own*

1       ***contentions*** as to the specific structure in the VT1195SFQ it contends are the “metal  
 2       conductors.” This is of course the entire purpose of infringement contentions.

3           Moreover, the addition of this “illustration” and the accompanying language does not  
 4       clarify what Infineon’s contentions are and indeed is itself internally inconsistent. First, Infineon  
 5       merely relies on circular language, stating that “those pictures” (referring to the otherwise  
 6       ambiguous images on the preceding pages which as noted above reflect multiple layers) “show  
 7       the metal layer under the bumps.” As noted above, however, there are multiple metal layers  
 8       “under the bumps” [REDACTED]

9 [REDACTED]  
 10       Moreover, the “illustration” on page 13 of Infineon’s Claim Chart [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 \_\_\_\_\_  
 28 [REDACTED] See Lidsky Trial Test’y, Fisher Decl., Ex. Q at 1098:1-6.

1 [REDACTED] [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]

9 There are several other portions of the TAICs which create similar ambiguity. While the  
 10 comments of Infineon's counsel at the January 24, 2013 hearing and in its meet and confer  
 11 letters suggest (but do not explicitly state) that Infineon is contending that [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]

16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

---

26 <sup>8</sup> Apparently conceding its "illustration" was flawed, Infineon's proposed revised infringement  
 27 contentions remove the "with vias" language from its mocked up illustration. See Fisher Decl.,  
 28 Ex. P at 13, 27. It remains unclear why Infineon will not simply refer to *the actual image* of the  
 VT1195SFQ that was included in its initial infringement contentions.

1        Each of these statements are internally inconsistent and cannot be reconciled with the  
 2 suggestion that Infineon is contending [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]

9 [REDACTED] Volterra has asked Infineon no less than seven (7) times to  
 10 explain how these statements – which were also addressed in Volterra’s prior motion to strike --  
 11 can be reconciled with Infineon’s apparent position, but Infineon refuses to respond to these  
 12 repeated requests. *See Fisher Decl.*, Exs. D-N; ¶¶ 7, 19-20. The simple fact is that these  
 13 statements are contradictory and cannot be reconciled, but have remained in the infringement  
 14 contentions because Infineon continues to try to “hedge its bets” as to its contentions.

15        Volterra believes that at this point the Court should strike Infineon’s infringement  
 16 contentions in their entirety. If the Court is inclined to provide Infineon with yet another chance,  
 17 however, Infineon should be ordered to amend its contentions to make its position as to which  
 18 layer in the VT1195SFQ meets the “metal conductors” limitations crystal clear. Thus, Infineon  
 19 should be required to make an explicit statement in its contentions such as either of the following  
 20 depending upon its position:

21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]

25        Infineon must then also be required to amend the statements on pages 15, 22-23, 28 and  
 26 36 of the claim chart to be consistent with whatever position Infineon is taking.

27  
 28

1           3. Infineon's DOE Contentions As To Claim 1 Remain Inadequate and  
2           Unclear.

3           Infineon's DOE contentions as to claim 1 are also insufficient. In its DOE contentions  
4           with respect to the "metal conductors" limitations, Infineon contends that:

5           [REDACTED]

6           [REDACTED]

7           [REDACTED]

8           [REDACTED]

9           [REDACTED]

10          [REDACTED]

11          [REDACTED]

12          [REDACTED]

13          *See Fisher Decl., Ex. B, Appendix A, p. 15 (emphasis added); see also id., p. 28 ("plurality of*  
14          *second metal conductors"). In its DOE contentions with respect to the "bumps" limitation,*  
15          *Infineon contends that:*

16          [REDACTED]

17          [REDACTED]

18          [REDACTED]

19          [REDACTED]

20          [REDACTED]

21          [REDACTED]

22          [REDACTED]

23          [REDACTED]

24          [REDACTED]

25          [REDACTED]

26          [REDACTED]

27          [REDACTED]

28          [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 See *id.*, pp. 22-23 (emphasis added); *see also id.*, p. 36 (“bumps” in contact with “plurality of  
 5 second metal conductors”).

6 Given the ambiguities and inconsistencies with respect to what Infineon is contending are  
 7 the “metal conductors” (discussed above) and the inconsistencies that pervade Infineon’s  
 8 descriptions of the “metal conductors” and “bumps,” it is impossible to tell what Infineon is  
 9 claiming for purposes of its DOE contentions. [REDACTED]

10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED] The answers to each of these questions are unclear.

16 Moreover, once Infineon has clarified what its contentions are, Infineon must then  
 17 provide an element-by-element explanation of *why* and *how* the doctrine applies. *See* 10/3/12  
 18 Order at 7. [REDACTED]

19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED] While the Court  
 22 indicated that Infineon could provide different theories under the DOE at the January 24, 2013  
 23 hearing,<sup>9</sup> the Court has ordered repeatedly that Infineon ***must clearly identify what those***  
 24 ***theories are***, including how and why the DOE applies to each theory. Infineon has plainly failed  
 25 to do so.  
 26

---

27 <sup>9</sup> See 1/24/13 Hr’g Tr., Fisher Decl., Ex. A at 5-6 (“It might be if it’s not that one layer, ***then we***  
 28 ***argue that layers one and two are sufficient under the DOE, or layers one, two and three,*** or  
 you can state different theories under the doctrine of equivalents.”) (emphasis added).

1           Further, Infineon's contentions are deficient in that they use open-ended and unclear  
 2 language. Specifically, as discussed above, on page 15 of its claim chart, Infineon uses the  
 3 phrase [REDACTED] and on pages 22-23 of its claim chart Infineon uses the phrase [REDACTED]  
 4 [REDACTED] Such open-ended language cannot possibly "crystallize" Infineon's  
 5 DOE contentions.

6           Infineon has instead once again left Volterra to guess as to what Infineon's present  
 7 contentions are to hedge its bets down the road, in violation of the Patent Local Rules and the  
 8 Court's October 3, 2012 and January 28, 2013 Orders. The TAICs should therefore be stricken.  
 9 If the Court is not inclined to strike the contentions, Infineon should be ordered to clearly state  
 10 what structure(s) it is contending are the "metal conductors" and "bumps" under the DOE and  
 11 then how and why the doctrine applies as to each such contention and to remove from its  
 12 contentions the ambiguous phrases [REDACTED]  
 13 on pages 15, 22-23, 28 and 36 of its claim chart.

14           **B. Infineon's Claim Chart For The VT1195SFQ Fails To Comply With Patent  
 15 L.R. 3-1 With Respect To The Asserted Dependent Claims Of The '730  
 Patent.**

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16           1. Infineon's Literal Infringement Contentions as to the Dependent Claims  
 17 Remain Inadequate and Unclear

18           Infineon's infringement contentions with respect to the dependent claims also remain  
 19 inadequate. Claims 2-8 of the '730 Patent (Fisher Decl., Ex. C) include additional limitations  
 20 relating to structure and arrangement of the "metal conductors" and/or how the "bumps" are  
 21 connected to the "metal conductors." For example, claim 2 provides that: "A semiconductor  
 22 power device according to claim 1 wherein the plurality of first metal conductors are  
 23 interdigitated with the plurality of second metal conductors," and Claim 3 provides that: "A  
 24 semiconductor power device according to claim 1 wherein each of the plurality of first and  
 25 second metal conductors are arranged in parallel extending in a first direction." *Id.*

26           Infineon's failure to clearly identify the specific structure(s) it is contending constitute  
 27 the "metal conductors" and "bumps" with respect to its allegations as to independent claim 1  
 28 infects its contentions with respect to each of the dependent claims. [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] This is not at all explained, and the TAICs instead  
 5 only provide the evasive and conclusory statement that “portions of the metal layer” meet the  
 6 “interdigitated” limitation, without identifying the specific “portion” or the specific “metal  
 7 layer.”<sup>10</sup> The disclosure with respect to dependent claims 3 and 4 use the same language and  
 8 similarly fail specify which specific portion(s) of which specific layer(s) are being referenced.  
 9 Indeed, Infineon continues to fail to make its contentions clear by again confusingly including  
 10 and relying upon the same ambiguous and unclear top-down images purporting to describe some  
 11 unidentified “metal layer” as the “metal conductors” which the Court has already found to be  
 12 obfuscating. *See, e.g.*, claim chart, Fisher Decl., Ex. B, Appendix A at pp. 56 (claim 2), 58  
 13 (claim 3), 60 (claim 4), 63, 65 (claim 5), 67 (claim 6), 68 (claim 7) and 69 (claim 8).  
 14 Accordingly, Infineon’s literal infringement contentions as to dependent claims 2-8 remain  
 15 inadequate. If the Court is not inclined to strike Infineon’s contentions, Infineon should be  
 16 ordered to amend its contentions to clearly identify the “portions” of the specific “metal layer”  
 17 being referenced.

18  
 19 \_\_\_\_\_  
 20 <sup>10</sup> Infineon’s TAICs for some reason struck the word “identified” that appeared in its SAICs  
 21 when referencing the “metal layer” in connection with the dependent claims of its TAICs.  
 22 Infineon’s claim chart for claim 2, for example, now reads: [REDACTED]

23 [REDACTED] Fisher Decl., Ex. B, Appendix A at 56  
 24 (emphasis added). It is therefore unclear what “metal layer” is being referenced. Infineon’s  
 25 proposed revised amendments to the TAICs purport to correct this problem by clarifying that the  
 26 “metal conductors” and “bumps” for the dependent claims are the same as those purportedly  
 27 identified for claim 1 (*see* proposed amended IC’s, Fisher Decl., Ex. P at 58, 61, 64, 67), but it  
 28 does little good to clarify that the “portions of the metal layer” and which “bumps” being  
 referenced in the dependent claims are the same “portions of the layer” and “bumps” being  
 referenced in claim 1 given Infineon’s failure to clearly identify the “metal conductors” and  
 “bumps” for purposes of claim 1 and because Infineon relies on top-down images that you have  
 acknowledged show multiple metal layers in the dependent claims. The proposed amendment  
 also completely ignores Infineon’s failure to address the ***additional limitations*** in the dependent  
 claims, i.e., the “interdigitated” limitation of claim 2.

1                   2. Infineon's DOE Contentions As To Dependent Claims 2-5 Are Also  
 2                   Inadequate And Unclear

3                   The TAICs also suggest that Infineon is making a contention that certain claim elements  
 4                   of dependent claims 2-5 may be met under the DOE. However, the TAICs do not at all explain  
 5                   what Infineon's DOE contentions are with respect to any of these dependent claims. Instead, all  
 6                   that Infineon does in its TAICs is to include a conclusory reference that certain limitations in  
 7                   each of these dependent claims are met "both literally and under the doctrine of equivalents."  
 8                   *See id.*, pp. 56, 58, 60 and 62 (claims 2-5). Further, as noted above, with respect to claims 2-4,  
 9                   the TAICs further provide the evasive and conclusory statement that "portions of the metal  
 10                  layer" meet the "metal conductors" limitation, without identifying the specific "portion" or the  
 11                  specific "metal layer."<sup>11</sup> This is plainly insufficient.

12                  If the Court is not inclined to strike Infineon's contentions, the Court should order that  
 13                  Infineon be required to clearly explain its DOE contentions with respect to dependent claims 2-5,  
 14                  including that Infineon identify the specific "portion" and the specific "metal layer" being  
 15                  referenced. The Court should further order that Infineon cannot now for the first time assert the  
 16                  DOE for dependent claims 6-8 (at least absent leave to amend), for which it has not provided any  
 17                  explanation whatsoever of its contentions.

18                  C. **Infineon's Infringement Contentions Improperly Add Three Additional**  
 19                  **Products Without Leave Of Court.**

20                  The TAICs also improperly reference and add three new accused products (the  
 21                  VT1626SFQ, VT1656SFQ and VT1676SFQ) without having been granted leave to amend. *See*  
 22                  Fisher Decl., Ex. B at 2 (listing Accused Products). This is improper and in violation of the  
 23                  Court's December 11, 2012 Order, which required that Infineon demonstrate that it could not  
 24                  have discovered the newly named products absent discovery when it served its initial  
 25                  infringement contentions. *See* Dkt. No. 162 at 4-6. In accordance with the parties' stipulation,

26  
 27                  <sup>11</sup> For the reasons discussed in footnote 10 above, Infineon's proposal to now identify that the  
 28                  "metal conductors" and "bumps" for purposes of its DOE contentions are the same as those  
                         purportedly identified for claim 1 is insufficient.

1 the Court ordered that Infineon refile its motion for leave to amend to add these additional  
 2 products no later than May 23, 2013. Dkt. No. 234. Infineon's attempt to add these three  
 3 additional products should be stricken until such time as Infineon has been permitted to add them  
 4 to the action.

5       **D.     Infineon's Infringement Contentions Should Be Stricken As To All Products**  
 6       **Other Than The VT1195SQF, Which Is The Only Product As To Which It**  
 7       **Has Provided A Claim Chart.**

---

8           The Court's Patent Local Rules require that Infineon specifically identify and provide a  
 9 separate Claim Chart for *each and every* product that it accuses of infringement. Specifically,  
 10 Patent Local Rule 3-1(c) requires that Infineon provide “[a] chart identifying specifically where  
 11 each limitation of each asserted claim is found within *each* Accused Instrumentality. . . .” Thus,  
 12 the Patent Local Rules on their face require that Infineon provide separate infringement  
 13 contentions in a chart form for *each* accused product. Here, however, Infineon has provided a  
 14 claim chart for *one* product (the VT1195SFQ), seeking to avoid the requirements of the local  
 15 rules by erroneously claiming that the VT1195SFQ is “representative” of all the (unspecified)  
 products that Infineon accuses.

16           Although some courts have indicated that a patentee may be permitted to provide a claim  
 17 chart for a truly “representative product,” these courts have held patentees to a high burden in  
 18 proving that the purportedly representative product is truly representative. *See Bender v.*  
 19 *Freescale Semiconductor, Inc.*, No. C 09-1156 PHJ, 2010 WL 1689465, at \*3 (“Rule 3-1(b) . . .  
 20 requires Plaintiff to articulate how the accused products share the same, or substantially the  
 21 same, infringing circuitry with any other product or with the 15 ‘representative’ products.”);  
 22 *Bender v. Maxim Integrated Prods., Inc.*, No. C 09-01152 SI, 2010 WL 1135762, at \*3; *Renesas*  
 23 *Tech. Corp. v. Nanya Tech. Corp.*, No. C 03-05709 JF (HRL), 2005 WL 2000926, at \*4 (N.D.  
 24 Cal., Aug. 18, 2005); *Renesas Tech. Corp. v. Nanya Tech. Corp.*, No. C 03-05709 JF (HRL),  
 25 2004 WL 2600466, at \*3-4 (N.D. Cal., Nov. 10, 2004). Infineon has not and cannot meet its  
 26

27       <sup>12</sup> The parties have previously briefed this issue, but the Court has deferred ruling on it due to the  
 28 deficiencies in Infineon's prior infringement contentions. Infineon's position remains as before – it refuses to provide separate claim charts for the accused products.

1 burden here, as it has made no showing and cannot show that the one product charted (the  
 2 VT1195SFQ) is in fact representative of all the accused products with respect to *each* limitation  
 3 of the claims. Infineon relies on attorney argument and the erroneous factual assertion that the  
 4 VT1195SFQ is “representative” of the other products that it references [REDACTED]

5 [REDACTED] Fisher Decl., Ex. B,  
 6 Appendix A, pp. 70-71. In fact, there are significant differences between the VT1195SFQ  
 7 product which Infineon provides a claim chart for and other products using the fcQFN package.  
 8 Lidsky Decl. ¶¶ 17-20.

9 Specifically, [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED] [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]

27 \_\_\_\_\_  
 28 <sup>13</sup> The “package” refers to how a semiconductor chip is connected to outside elements, such as a  
 printed circuit board. Lidsky Decl. ¶ 19 n.2.

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]

8 Infineon's reliance on the VT1195SFQ as a "representative product" and its failure to  
 9 submit claim charts for each accused device are therefore impermissible. Accordingly, the Court  
 10 should strike any assertion in Infineon's TAICs that any product other than the one product for  
 11 which it has provided a claim chart (the VT1195SFQ) allegedly infringes the asserted claims of  
 12 the '730 Patent and preclude Infineon from taking discovery on any other product. *See* Dkt. No.  
 13 91 at 3 ("Courts in this District will routinely stay discovery until the plaintiff has met its  
 14 obligations under the [Patent Local] Rule."). In the alternative, Infineon should be required to  
 15 provide separate claim charts for each of the accused Volterra products which fully comply with  
 16 Patent Local Rule 3-1 so as to crystallize Infineon's contentions of infringement as to each  
 17 separate limitation of each asserted claim in each product and, in the interim, be precluded from  
 18 taking discovery on any product other than the VT1195SFQ.

19 **E. Infineon Should Not Be Granted Leave To Amend Its Infringement**  
 20 **Contentions A Fifth Time.**

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21 Patent Local Rule 3-6 provides that amendments to infringement contentions are not  
 22 permitted except upon a timely showing of good cause. Infineon has not sought leave to amend,  
 23 has not done so in a timely fashion and cannot possibly show good cause here. As the Court  
 24 stated in its October 3, 2012 Order, "Plaintiff reverse-engineered the accused product and  
 25 presumably knows whether the allegedly infringing portion has one metal layer or multiple metal  
 26 layers. *It must now take a specific position on its theory of infringement, as is required by*  
 27 *Rule 3-1.*" Dkt. No. 132 at 6 (emphasis added). The Court's January 28, 2013 Order similarly  
 28 found: "Plaintiff knows more than it is showing... *The Patent Rules do not tolerate this kind*

1        *of obfuscation.... Plaintiff reverse-engineered the VT1195SFQ and presumably knows – and*  
2        *now must state – which metal layer(s) allegedly correspond to the claim limitations.” Dkt. No.*  
3        193 at 6, 8 (emphasis added). Notwithstanding the Court’s October 3, 2012 and January 28,  
4        2013 Orders, Infineon has repeatedly refused to comply with its Patent Local Rule obligations.  
5        At the January 24, 2013 hearing, the Court stated that it was going to give Infineon “one more  
6        chance” to comply with the Patent Local Rules. 1/24/13 Hr’g Tr., Fisher Decl., Ex. A at 8:10-  
7        11. Notwithstanding the Court’s multiple prior Orders, Infineon has continued to obfuscate and  
8        play hide the ball. Infineon’s Infringement Contentions should therefore be stricken in their  
9        entirety without leave to amend.

**F. The Court Should Continue to Stay Discovery As To Volterra Unless And Until Infineon Complies With Its Obligations Under The Patent Local Rules.**

If the Court is inclined to permit Infineon yet another chance to comply with the Patent Local Rules, it should maintain the current stay on discovery by Infineon. As the Court has recognized repeatedly, Courts in this District routinely deny patentees any discovery until they have provided sufficient Infringement Contentions. *See* Dkt. No. 91 at 3; Dkt. No. 132 at 8; Dkt. No. 193 at 8. Volterra requests that the stay be maintained in place and that Infineon be precluded from taking discovery from Volterra due to its failure to comply with the Patent Local Rules and that Volterra's deadline to serve its Invalidity Contentions continue to be stayed.

## V. CONCLUSION

For the foregoing reasons, Volterra's Motion should be granted.

Dated: May 23, 2013

FARELLA BRAUN + MARTEL LLP

By: /s/ Jeffrey M. Fisher  
Jeffrey M. Fisher

Attorneys for Defendant  
VOLTERRA SEMICONDUCTOR  
CORPORATION